IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Steve Weinberg, Plaintiff, vs. National Football League Players Association, Richard Berthelsen, Gene Upshaw, Tom DePaso, Trace Armstrong, Roger Kaplan, John Collins, Keith Washington, Tony Agnone, Howard Shatsky, and Mark Levin, Defendants.	§ § § § § § § § § § § §	Civil Action No. 3-06-CV2332-B **ECF**

NFLPA DEFENDANTS' EXPEDITED MOTION TO EXTEND DEADLINE TO ANSWER, MOVE, OR OTHERWISE RESPOND TO THE PETITION, AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, Defendants National Football League Players Association ("NFLPA"), Richard Berthelsen, Gene Upshaw, Tom DePaso, Trace Armstrong, Keith Washington, John Collins, and Mark Levin (collectively, the "NFLPA Defendants"), hereby files this, its Expedited Motion to Extend Deadline To Answer, Move, Or Otherwise Respond to the Petition, and Memorandum of Law in Support Thereof. Specifically, the NFLPA Defendants move for a two week extension of time, until January 9, 2006, to answer, move, or otherwise respond to Plaintiff's Petition. In support of their Motion, the NFLPA Defendants state as follows:

BACKGROUND

1. The Petition. On or about November 20, 2006, Plaintiff Steven Weinberg filed his First Amended Petition in Steve Weinberg v. National Football League Players Assoc., et al., Cause No. 06-11845, in the District Court for the 95th

Judicial District of Dallas County, Texas (the "Petition").[1]

2. The Removal. On or about December 18, 2006, the NFLPA Defendants timely removed this action to the United States District Court for the Northern District of Texas, Dallas Division. The non-NFLPA Defendants in this action (Defendants Kaplan, Shatsky, and Agnone), consented to the removal.

3. Service. The NFLPA and Collins were served with the Petition on November 29, 2006, and Washington was served with the Petition on December 2, 2006. (See Notice of Removal, Ex. A, Tab 1 (state court docket).) The remaining NFLPA Defendants have not yet been served. (See id.)

MOTION

4. In the absence of improper prejudice to a party, the Court enjoys broad discretion over the administration of its cases. See, e.g., Macklin v. City of New Orleans, 293 F.3d 237, 240 (5th Cir. 2002) ("As there is no indication that the district court exercised leniency unfairly [in extending filing deadlines] or otherwise improperly prejudiced [the plaintiff], we find no abuse of discretion."). Moreover, Rule 6(b) of the Federal Rules of Civil Procedure permits the Court, in its discretion, to enlarge a period of time "for cause" when a request is made prior to the expiration of time originally allowed. Fed. R. Civ. P. 6(b).

5. Pursuant to Rule 81(c) of the Federal Rules of Civil Procedure, the NFLPA Defendants', Collins's, and Washigton's deadline for answering, moving, or otherwise responding to the Petition is December 26, 2006. Although the remaining

[1] Defendants specifically preserve and do not waive any and all applicable defenses, including, without limitation, those pursuant to Federal Rule of Civil Procedure 12 and any right to demand arbitration. Moreover, certain parties may challenge Texas' in personam jurisdiction over them.

NFLPA Defendants' responsive pleadings are not due on that date (because they have not yet been served, see Fed. R. Civ. P. 81(c)), the NFLPA Defendants wish to, in the interest of judicial economy, file a single responsive pleading. As stated above, that pleading is currently due on December 26, 2006, the day after the Christmas holiday. As of the filing of this Motion, the time for the NFLPA Defendants' responsive pleading has not run.

6. Given the complexity and sheer number of factual and legal issues presented in Plaintiff's forty-page Petition, and the imminent Christmas and New Year's holidays, counsel for the NFLPA Defendants asked counsel for Plaintiff for a three week extension of time to answer, move, or otherwise respond. This request was first made on December 18, 2006, the same day that the NFLPA Defendants removed this action.

7. Plaintiff's counsel responded to the extension request by email, as follows: "If we agree to a three week extension, will your clients agree to mediate the case within the next three weeks[?]"

8. Counsel for the NFLPA Defendants responded that their clients are not interested in mediating this case, and reiterated that they were merely seeking a reasonable extension of time to answer, move, or otherwise respond to the Petition. Plaintiff's counsel stated that he would discuss the NFLPA Defendants' request with his co-counsel and then respond. Despite repeated follow-up emails and phone calls to two of Plaintiff's lawyers over the next two days, Plaintiff never responded to the NFLPA Defendants' requests.

9. On December 20, 2006, counsel for the NFLPA Defendants yet again called the law offices of counsel for Plaintiff, and asked to speak to either of two

lawyers who are handling this case. Counsel for the NFLPA Defendants was told that the lawyers were in the office, but could not be located. Counsel for the NFLPA Defendants thus left a voice message for one of the attorneys, stating that, in light of Plaintiff's unwillingness to extend the NFLPA Defendants' deadline for filing a responsive pleading, the NFLPA Defendants would ask the Court for such an extension. The voicemail specified that the phone call had been placed in order to comply with the Local Rules, and that if counsel for the Plaintiff did not respond, the NFLPA Defendants would treat such a non-response as an indication that Plaintiff would oppose this Motion. On December 21, 2006, Counsel for Plaintiff finally responded, indicating that he would not consent to the requested extension.

10. Granting the NFLPA Defendants' Motion for a short, two week extension of time to answer, move, or otherwise respond to the Petition will not prejudice the Plaintiff in any way. Indeed, the Plaintiff appears to have rejected the NFLPA Defendants' request not because of any prejudice, but in an effort to coerce the NFLPA Defendants into mediation just one month after filing the lawsuit. Moreover, in light of the sheer number of issues presented by the voluminous Petition, and the Christmas and New Year's holidays being just around the corner, there is "cause" for granting the NFLPA Defendants' Motion. Fed. R. Civ. P. 6(b).

CONCLUSION AND REQUESTED RELIEF

The NFLPA Defendants respectfully request an Order extending their deadline to answer, move, or otherwise respond to Plaintiff's Petition for two weeks, until January 9, 2006.

Dated: December 21, 2006

Respectfully submitted,

s/ Ralph I. Miller
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CERTIFICATE OF CONFERENCE

This is to certify that on the 20th of December, 2006, counsel for the NFLPA Defendants left a voicemail with counsel for the Plaintiff stating that, due to Plaintiff's refusal to grant the NFLPA Defendants an extension of time to file a responsive pleading to the Petition, the NFLPA Defendants would ask the Court for such an extension of time. Counsel for the NFLPA Defendants specified that the phone call had been placed in order to comply with the Local Rules, and that if counsel for the Plaintiff did not respond, the NFLPA Defendants would treat such a non-response as an indication that Plaintiff would oppose this Motion. On December 21, 2006, Counsel for Plaintiff finally responded, indicating that he would not consent to the requested extension.

s/ Aaron D. Ford

CERTIFICATE OF SERVICE

On December 21, 2006, I electronically transmitted the foregoing Expedited Motion to Extend Deadline To Answer, Move, Or Otherwise Respond to the Petition, and Memorandum of Law in Support Thereof using the ECF system for filing and transmittal of a Notice of Electronic Filing to those parties registered for ECF in this case. I further certify that the foregoing document was served on all counsel of record by ECF.

s/ Aaron D. Ford